

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER DELVON RAMSEY,

Defendant-Appellant.

UNPUBLISHED

February 4, 2010

No. 289710

Wayne Circuit Court

LC No. 08-005817-FC

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of second-degree murder, MCL 750.317. He was sentenced to 31 to 60 years on one count and 31 years and three months to 60 years on the other count. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arose out of the stabbing deaths of defendant's girlfriend, Kimberly Martin, and her daughter, Ericka Martin. On or around December 11, 2007, defendant told his friend, Ira Richards, that he wanted to "beat up" Kimberly because she had "cheated" on him with another man. A few days later, defendant told Richards that he wanted to sell his computer, purchase a gun, and shoot Kimberly. Defendant acknowledged in a statement to the police following the incident that he went to Kimberly's house on December 14, 2007, to pick up his son. He admitted stabbing Kimberly with a knife after she told him that she never loved him and was romantically involved with someone else. He also admitted stabbing Ericka when he heard her coming up the stairs to help Kimberly. Defendant confessed to his mother immediately after the incident that he "lost it" and stabbed both Kimberly and Ericka.

Defendant first argues that the trial court denied him his rights to due process, to present a complete defense, and to a fair trial by denying his request for a voluntary manslaughter jury instruction with respect to Ericka. We disagree. In general, we review claims of instructional error de novo, but we review for an abuse of discretion a trial court's determination regarding whether an instruction is applicable to the facts of a case. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006); *People v Fennell*, 260 Mich App 261, 264; 677 NW2d 66 (2004). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *People v Carnicom*, 272 Mich App 614, 617; 727 NW2d 399 (2006).

Generally, jury instructions must fairly present the issues to be tried and sufficiently protect a defendant's rights. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001), lv den 465 Mich 952 (2002). The instructions must include all elements of the charged offenses, and must not exclude relevant issues, defenses, and theories if supported by the evidence. *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). The Supreme Court has determined that voluntary manslaughter is a necessarily included lesser offense of murder. *People v Mendoza*, 468 Mich 527, 541; 664 NW2d 685 (2003). Thus, when a defendant is charged with murder, a trial court must instruct the jury on voluntary manslaughter if such an instruction is supported by a rational view of the evidence. *Id.*

Voluntary manslaughter requires that: “(1) the defendant killed in the heat of passion; (2) the passion was caused by adequate provocation; and (3) there was no lapse of time during which a reasonable person could have controlled his passions.” *People v Tierney*, 266 Mich App 687, 714; 703 NW2d 204 (2005). The degree of provocation required must cause a reasonable person to lose control and act out of passion rather than reason. *Id.* at 714-715. Whether the degree of provocation is sufficient to mitigate a killing from murder to voluntary manslaughter is ordinarily a question of fact for the jury, but a trial court may decline to instruct the jury on voluntary manslaughter where no reasonable jury could conclude that the provocation was adequate. *People v Pouncey*, 437 Mich 382, 391-392; 471 NW2d 346 (1991); see also *Tierney*, 266 Mich App at 715.

The trial court did not abuse its discretion by determining that a voluntary manslaughter instruction was inappropriate regarding Ericka. Defendant argues that a voluntary manslaughter instruction was supported by the evidence that he “snapped” or “lost it” after Kimberly told him that she never loved him. He contends that his anger and provocation regarding Kimberly carried over to Ericka when she attempted to assist Kimberly.¹ Whether provocation is adequate to mitigate a killing from murder to manslaughter is determined separately with respect to each victim. See *id.* at 715-716. Defendant admitted in his statement to the police that Kimberly called for Ericka after he stabbed Kimberly and that he confronted Ericka on the stairs as she was attempting to assist Kimberly. Under these circumstances, no reasonable jury could conclude that adequate provocation existed with respect to Ericka. Therefore, the trial court did not abuse its discretion by denying defendant's request for a voluntary manslaughter jury instruction regarding Ericka.

In a supplemental brief, defendant argues that he was denied his due process rights when the trial court admitted into evidence allegedly gruesome photographs portraying the decedents. Because defense counsel specifically stated that he did not object to the admission of the photographs, any error was waived.² A defendant's expression of approval regarding the

¹ Although defendant relies on two forensic psychological evaluations in support of his argument, we do not consider these evaluations because they were not admitted as evidence at trial.

² We note that immediately before trial, defendant challenged the admissibility of certain photographs on the basis that they were overly inflammatory. These photographs, however, were not admitted as evidence during trial.

admission of evidence waives any objection to the evidence and extinguishes any error. See *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000).

Affirmed.

/s/ Pat M. Donofrio

/s/ Patrick M. Meter

/s/ Christopher M. Murray